IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY**

**and**
**THE HON'BLE MR JUSTICE T.CH.SURYA RAO**

**WRIT PETITION NO : 21769 of 2004**

Between:

M/s. Tirumalagiri Traders, Gudivada, Krishna District,
Rep. by its Partner, Ch. V. Mallikarjuna Rao, S/o. Lakshmaiah, 40 Years.

**..... PETITIONER**

AND

The Commercial Tax Officer, Gudivada, Krishna District.

**.....RESPONDENT**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction in the nature of writ of mandamus declaring the proviso to Section-19 of APGST Act, 1957 restricting power of the Appellate Authority to condone delay of 30 days introduced in 1997 as illegal, arbitrary, unconstitutional violating Articles-245 and 258 of the Constitution of India and consequently set aside the tax under Section-5A levied by the respondent namely commercial Tax Officer, Gudivada in Assessment for 2001-2002 dt, 18.01.2002 on subsequent sales of Soya Been de-oiled cake, poultry feed, being contrary to law in G.O.Ms.No.911 Revenue Dt. 31.12.1999 and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

**Counsel for the Petitioner:MR.M.V.J.K.KUMAR**

**Counsel for the Respondent: MR. K.RAJI REDDY, Special Standing Counsel for Commercial Taxes**

**The Court at the admission stage made the following ORDER: (Per BRSR,J)**

It is brought to our notice by the learned Special Standing Counsel for the department that this Court in its decision reported in ***REKHA TIMBER DEPOT, ONGOLE AND OTHERS v. DEPUTY COMMERCIAL TAXES OFFICER, PRAKASAM DISTRICT AND OTHERS*** upheld the constitutional validity of proviso to Section 19 of the Andhra Pradesh General Sales Tax Act, 1957, whereunder, the power of the appellate authority to condone the delay has been restricted to only thirty (30) days. The same issue cannot be permitted to be raised once again. Such a course is impermissible in law.

The writ petition fails and shall accordingly stand dismissed. There shall be no order as to costs.

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(B. Sudershan Reddy,J)

Date:29th November, 2004.

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(T.Ch.Surya Rao, J)

**kvni**/ks

To

1 The Commercial Tax Officer, Gudivada, Krishna District

2 Two CD copies.